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# BULLETIN

## OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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### DIRECTORY

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*Commissioners*

**Jeffrey Mulligan, *Executive Director***

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### CONTENTS

DOCKET .....715

CALENDAR of December 8, 2009

Morning .....716

Afternoon .....717

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# CONTENTS

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**MINUTES of Regular Meetings,  
Tuesday, November 17, 2009**

Morning Calendar .....718

**Affecting Calendar Numbers:**

395-60-BZ	2557-2577 Linden Boulevard, Brooklyn
16-95-BZ	434 East 77 <sup>th</sup> Street, Manhattan
172-96-BZ	597/99 Marcy Avenue, Brooklyn
115-53-BZ	252-02 Union Turnpike, Queens
240-55-BZ	207-22 Northern Boulevard, Queens
1715-61-BZ	129-02 Guy R. Brewer, Queens
60-82-BZ	60-11 Queens Boulevard, Queens
1016-86-BZ	2162-2166 Broadway, Manhattan
217-96-BZ	165-01 Northern Boulevard, Queens
195-99-BZ	112 Atlantic Avenue, Brooklyn
311-04-BZ	380 Lighthouse Avenue, Staten Island
147-07-BZY	144 North 8 <sup>th</sup> Street, Brooklyn
159-09-A	85 Woodland Avenue, Staten Island
217-09-A	514-516 East 6 <sup>th</sup> Street, Manhattan
315-08-A	246 Spring Street, Manhattan
243-09-BZY	87-12 175 <sup>th</sup> Street, Queens

Afternoon Calendar .....727

**Affecting Calendar Numbers:**

54-09-BZ	150 Mercer Street, Manhattan
56-09-BZ	6736 Hylan Boulevard, Staten Island
198-09-BZ	143 West 19 <sup>th</sup> Street, Manhattan
215-09-BZ	92-16 95 <sup>th</sup> Avenue, Queens
186-08-BZ	3065 Atlantic Avenue, Brooklyn
28-09-BZ	133 Taaffe Place, Brooklyn
29-09-BZ	44 Brunswick Street, Staten Island
161-09-BZ	580 Carroll Street, Brooklyn
187-09-BZ	94 Amherst Street, Brooklyn
239-09-BZ	238 Thompson Street, Manhattan
269-09-BZ	1938 East 12 <sup>th</sup> Street, Brooklyn
279-09-BZ	2709 Avenue M, Brooklyn

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# DOCKET

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New Case Filed Up to November 17, 2009

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NONE  
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**DESIGNATIONS: D-Department of Buildings; B.BK.-Department of Buildings, Brooklyn; B.M.-Department of Buildings, Manhattan; B.Q.-Department of Buildings, Queens; B.S.I.-Department of Buildings, Staten Island; B.BX.-Department of Building, The Bronx; H.D.-Health Department; F.D.-Fire Department.**

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# CALENDAR

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**DECEMBER 8, 2009, 10:00 A.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday morning, December 8, 2009, 10:00 A.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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## **SPECIAL ORDER CALENDAR**

### **603-86-BZ**

APPLICANT – H. Irving Sigman, P.E., for 8826 Parsons LLC, owner.

SUBJECT – Application September 3, 2009 – Extension of Term for a Variance (§72-21) allowing the construction of retail stores (UG 6), which expired on September 8, 2007; Amendment for minor modifications to the accessory open parking area and refuse area; Amendment requesting the elimination of a term; Waiver of the Rules. R7A (Downtown Jamaica Special Distrit) zoning district.

PREMISES AFFECTED - 88-34 Parsons Boulevard, a/k/a 88-26/34 Parsons Boulevard. North west corner of Parsons Boulevard and 89th Avenue, Block 9762, Lot 41, Borough of Queens.

**COMMUNITY BOARD #12Q**

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### **813-87-BZ**

APPLICANT – The Law Office of Fredrick A. Becker, for Gwynne Five LLC, owner; TSI Cobble Hill LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application October 8, 2009 – Extension of Term for a special permit (§73-36) which expired on April 12, 2008 for the operation of a Physical Culture Establishment (New York Sports Club); Waiver of the Rules. C2-3 (R6) zoning district.

PREMISES AFFECTED – 110 Boerum Place, Westerly side of Boerum Place 0 feet northerly of Dean Street, Block 279, Lot 1, Borough of Brooklyn

**COMMUNITY BOARD #2BK**

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### **21-91-BZ**

APPLICANT – Sheldon Lobel, P.C., for Hadarth Latchininarain, owner.

SUBJECT – Application September 21, 2009 – Extension of Term (§72-01 & 72-22) to extend the term of the previously granted variance that permits the operation of an automotive glass and mirror repair establishment (UG 7D) and used car sales (UG 16B) which expired on July 24, 2009; Waiver for not filing within thirty days of the expiration of the term. Located in a R5 zoning district.

PREMISES AFFECTED – 2407-2417 Linden Boulevard, located on the northern corner corner of Linden Boulevard and Montauk Avenue, Block 4478, Lot 24, Borough of Brooklyn.

**COMMUNITY BOARD #5BK**

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### **75-95-BZ**

APPLICANT – The Law Office of Fredrick A. Becker, for The Ruprert Yorkville Towers Condominium, owner; TSI East 91 d/b/a New York Sports Club, lessee.

SUBJECT – Application October 8, 2009 – Extension of Term for a special permit (§73-36) which expired on January 28, 2006 for the operation of a Physical Culture Establishment (New York Sports Club); Waiver of the Rules. C2-8 zoning district.

PREMISES AFFECTED – 1635 Third Avenue, Easterly side of Third Avenue between East 91st Street and East 92nd Street. Block 1537, Lot 7501, Borough of Manhattan.

**COMMUNITY BOARD #8M**

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### **136-01-BZ**

APPLICANT – Eric Palatnik, P.C., for Cel-Net Holding, Incorporated, owner.

SUBJECT – Application April 25, 2008 – Extension of Time to complete construction and obtain a Certificate of Occupancy for a Variance (§72-21) which permitted non-compliance in commercial floor area and rear yard requirements; Amendment seeks to reduce the previously approved 55,752 square feet of commercial floor area to the proposed 31,784 square feet of proposed commercial floor area which in permitted in the district. Waiver of the Rules. M1-4/R7A (Hunters Point Subdistrict) zoning district.

PREMISES AFFECTED – 11-11 44<sup>th</sup> Drive, Northside between 11th and 21st Streets. Block 447, Lot 13, Borough of Queens.

**COMMUNITY BOARD #2Q**

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## **APPEALS CALENDAR**

### **199-09-A thru 213-09-A**

APPLICANT – Eric Palatnik, P.C., for Gino Savo, owner.

SUBJECT – Application June 29, 2009 – Proposed construction of 15 (2) story one family homes not fronting on a mapped street contrary to General City Law Section 36. R3A /R3-2 Zoning District. Series Cal. Nos. 199-213-09-A

PREMISES AFFECTED – 165, 161, 159, 155, 153, 151, 149, 145, 143, 141, 137, 135, 131, 129, 127, Roswell Avenue, Block 2641, Lot 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, Borough of Queens.

**COMMUNITY BOARD #2Q**

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### **257-09-BZY & 258-09-BZY**

APPLICANT – Gouranga C. Kundu, for Isteak Rum, owner.

SUBJECT – Application September 9, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 Zoning district. R5 Zoning District.

PREMISES AFFECTED – 88-36 & 88-38 144<sup>th</sup> Street,

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# CALENDAR

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86.63' from corner of 88<sup>th</sup> Road and 144<sup>th</sup> Street, Block 9683, Lot 15 & 16, Borough of Queens.

**COMMUNITY BOARD #12Q**

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**259-09-BZY & 261-09-BZY**

APPLICANT – Gouranga C. Kundu, for Isteak Rum, owner.  
SUBJECT – Application September 9, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 Zoning district. R5 zoning District.

PREMISES AFFECTED – 139-48 88<sup>th</sup> Road, 88-30 144<sup>th</sup> Street and 88-34 144<sup>th</sup> Street, corner of 88<sup>th</sup> Road and 144<sup>th</sup> Street, Block 9683, Lot 13 & 14, Borough of Queens.

**COMMUNITY BOARD #12Q**

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**DECEMBER 8, 2009, 1:30 P.M.**

**NOTICE IS HEREBY GIVEN** of a public hearing, Tuesday afternoon, December 8, 2009, at 1:30 P.M., at 40 Rector Street, 6<sup>th</sup> Floor, New York, N.Y. 10006, on the following matters:

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**ZONING CALENDAR**

**44-09-BZ**

APPLICANT – Philip L. Rampulla, for Tony Chrampanis, owner.

SUBJECT – Application March 11, 2009 – Variance (§72-21) to allow for a two-story commercial building (UG 6) with accessory parking, contrary to use regulations (22-00). R3-1 district.

PREMISES AFFECTED – 2175 Richmond Avenue, Eastside of Richmond Avenue 39.80' south of Saxon Avenue, Block 2361, Lot 12(tent), 14, 17, 22, Borough of Staten Island.

**COMMUNITY BOARD #2SI**

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**162-09-BZ**

APPLICANT – Sheldon Lobel, P.C., for Steinway 30-33, LLC, owner; Steinway Fitness Group, LLC d/b/a Planet Fitness, lessee.

SUBJECT – Application April 27, 2009 – Special Permit (§73-36) to allow the legalization of a physical culture establishment (Planet Fitness) in the cellar, first, and second floors in an existing two-story building. Special Permit (73-52) to extend the C4-2A zoning district regulations 25 feet into the adjacent R5 zoning district. C4-2A/R5 zoning districts.

PREMISES AFFECTED – 30-33 Steinway Street, east side of Steinway Street, south of 30<sup>th</sup> Avenue, Block 680, Lot 32, Borough of Queens.

**COMMUNITY BOARD #1Q**

**264-09-BZ**

APPLICANT – Moshe M. Friedman, P.E., for Joseph Ashkenaki, owner; LRHC Flatbush NY, LLC, lessee.

SUBJECT – Application September 15, 2009 – Special Permit (§73-36) to legalize the operation of an existing physical culture establishment (Lucille Roberts) on the second and third floors of a three-story commercial building. C4-4A zoning district.

PREMISES AFFECTED – 927 Flatbush Avenue, aka 927-933 Flatbush Avenue, aka 21-33 Snyder Avenue, Block 5103, Lot 8, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

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**292-09-BZ**

APPLICANT – Martyn & Don Weston, for Barbara Aal-Albar LLC, owner; Third Avenue Auto Corporation, lessee.

SUBJECT – Application October 15, 2009 – Special Permit (§11-411, §11-413 & §73-03) Amendment to change of use from a gasoline service station (UG16B) to automotive repair establishment (UG16B), Re-instatement of the term which expired on December 7, 1999; Waiver of the Boards Rules. C1-3/R6A & R5B(Special Bay Ridge District).

PREMISES AFFECTED – 9310-9333 Third Avenue, North east corner of 94th Street, Block 6107, Lot 1, Borough of Brooklyn.

**COMMUNITY BOARD #10BK**

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**293-09-BZ**

APPLICANT – Eric Palatnik, Esq., for Rami Esses, owner.

SUBJECT – Application October 15, 2009 – Special Permit (§73-622) for the enlargement of an existing two family home to be converted into a single family home contrary to open space and floor area (23-141(a)). R-2 zoning district.

PREMISES AFFECTED – 2501 Avenue M, northeast corner of Avenue M and Bedford Avenue, Block 7643, Lot 8, Borough of Brooklyn.

**COMMUNITY BOARD #8BK**

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*Jeff Mulligan, Executive Director*

# MINUTES

**REGULAR MEETING  
TUESDAY MORNING, NOVEMBER 17, 2009  
10:00 A.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

**SPECIAL ORDER CALENDAR**

**395-60-BZ**

APPLICANT – Sheldon Lobel, P.C., for Ali A. Swati, owner.

SUBJECT – Application December 22, 2006 – Extension of Term (§11-411, §11-413) for change of use from a gasoline service station (UG16) to automotive repair establishment (UG16), which expired on December 9, 2005; Amendment to reduce the size of the subject lot and to request a UG6 designation for the convenience store; and an Extension of Time to obtain a certificate of occupancy which expired on January 19, 2000. R5 zoning district.

PREMISES AFFECTED – 2557-2577 Linden Boulevard, north side of Linden Boulevard between Euclid Avenue and Pine Street, Block 4461, Lot 27, Borough of Brooklyn.

**COMMUNITY BOARD #5BK**

APPEARANCES –

For Applicant: Elizabeth Safian.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure; an extension of term, which expired on December 9, 2005; an extension of time to obtain a certificate of occupancy, which expired on January 19, 2000; an amendment to allow for the subdivision of the lot; and an amendment to allow changes in use within Use Group 16 and from Use Group 16 to Use Group 6 on a portion of the site; and

WHEREAS, a public hearing was held on this application on November 25, 2008 after due notice by publication in *The City Record*, with continued hearings on January 13, 2009, February 10, 2009, April 21, 2009, June 23, 2009, August 11, 2009, and September 22, 2009, and then to decision on November 17, 2009; and

WHEREAS, the site and surrounding area had site and neighborhood examinations by Chair Srinivasan, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 5, Brooklyn, recommends approval of this application; and

WHEREAS, the site is located on the northwest corner of

Linden Boulevard and Euclid Avenue, within an R5 zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 1, 1960, when, under the subject calendar number, the Board granted a variance to permit the construction of a gasoline service station with accessory uses for a term of 15 years; and

WHEREAS, subsequently, the grant has been amended and the term extended by the Board at various times; and

WHEREAS, the grant was most recently extended on January 19, 1999 for a term of ten years from the expiration of the prior grant, to expire on December 9, 2005; the grant also allowed for the legalization of an enlargement of the accessory building for use as a convenience store; and

WHEREAS, the applicant represents that an extension of term and a certificate of occupancy were not obtained in a timely manner due to administrative oversight; and

WHEREAS, pursuant to ZR § 11-411, the Board may permit an extension of term; and

WHEREAS, the applicant seeks an amendment to (1) subdivide the lot, (2) permit a change in use from a gasoline service station (Use Group 16) to automotive repair establishment (Use Group 16) and (3) permit a change in use from accessory Use Group 16 to Use Group 6 for the existing convenience store; and

WHEREAS, with regard to the subdivision of the lot, the applicant submitted (1) site plans, which reflect the proposed configuration of the subject site and the adjacent lots; and (2) proof of ownership of the lots; and

WHEREAS, based on its review of the lot configuration, use of the site, and visual inspection of the site, the Board does not find that such a change, which would result in a substandard, irregularly-shaped lot is appropriate; and

WHEREAS, at hearing, the Board stated that it would not consider any of the proposed amendments or requested extensions until the applicant had demonstrated good faith efforts to remedy the poor site conditions; and

WHEREAS, specifically, the Board directed the applicant to improve the conditions of the site, including (1) remove the portion of the one-story frame enlargement to the existing building, which is not reflected on the BSA-approved plans; (2) improve site conditions, which includes the removal of graffiti, any signs not approved by the Board, and debris; (3) repair and install new fencing; and (4) repave the parking lot; and

WHEREAS, in response, the applicant submitted (1) evidence that the property owner has engaged an architect and applied for permits to demolish the existing enlargement to the building, which is contrary to the prior Board approvals; (2) photographs of the site, which reflect the removal of graffiti, the non-complying billboard, and debris; and (3) photographs of improved fence conditions; and

WHEREAS, the applicant also submitted a letter from the project architect stating that the removal of the one-story frame enlargement to the western side of the building would not compromise the structure of the remaining building; and

# MINUTES

WHEREAS, the applicant proposes to re-pave the parking lot; and

WHEREAS, the Board accepts the submitted evidence as verification that the applicant is pursuing the required site improvements in good faith; and

WHEREAS, with regard to the proposed change in use from a gasoline station to an automotive repair establishment, the Board has determined that the change in use from one Use Group 16 use to another Use Group 16 use is appropriate; and

WHEREAS, the Board notes that the applicant must comply with all Department of Environmental Protection requirements associated with the termination of the gasoline service station use at the site; and

WHEREAS, with regard to the applicant's request to change the designation of the existing convenience store from an accessory Use Group 16 use to a Use Group 6 use, the Board has determined that this is appropriate; and

WHEREAS, pursuant to ZR § 11-413, the Board may grant a request for a change in use from one non-conforming use to another non-conforming use which would be permitted under ZR § 52-31; and

WHEREAS, based upon the above, the Board denies the applicant's request to subdivide the lot, but finds that the other requested amendments are appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, dated November 1, 1960, so that as amended this portion of the resolution shall read: "to extend the term for ten years from December 9, 2005, to expire on December 9, 2015; to grant an extension of time to obtain a certificate of occupancy to May 17, 2010, and to permit the noted use changes and site modifications; *on condition* that the use and operation shall substantially conform to the previously approved drawings; and *on further condition*:

THAT the term of the grant shall expire on December 9, 2015;

THAT a certificate of occupancy shall be obtained by May 17, 2010;

THAT Department of Environmental Protection approval shall be obtained for any work associated with the termination of the gasoline service station use at the site;

THAT the site shall be maintained free of debris;

THAT all graffiti shall be removed within 48 hours;

THAT all signage shall comply with C1 zoning district sign regulations;

THAT all fencing shall be maintained in good condition;

THAT the parking lot shall be paved and maintained in good condition;

THAT all conditions from the prior resolution not specifically waived by the Board remain in effect; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted." (DOB Application No. 320008120)

Adopted by the Board of Standards and Appeals, November 17, 2009.

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## 16-95-BZ

APPLICANT – Akerman Senterfitt, LLP, for STA Parking Group, owner.

SUBJECT – Application July 24, 2009 – Extension of Term and Waiver of the Rules of a previously granted Variance (§72-21) for a UG8 parking garage with accessory auto repairs which expired on March 23, 2009. R-8B zoning district.

PREMISES AFFECTED – 434 East 77<sup>th</sup> Street, between 76<sup>th</sup> and 77<sup>th</sup> Street, Block 1471, Lot 31, Borough of Manhattan.

## COMMUNITY BOARD #8M

### APPEARANCES –

For Applicant: Calvin Wong.

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

### THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for a previously granted variance for a parking garage (Use Group 8) with accessory auto repairs, which expired on March 23, 2009; and

WHEREAS, a public hearing was held on this application on October 6, 2009, after due notice by publication in *The City Record*, with a continued hearing on October 27, 2009, and then to decision on November 17, 2009; and

WHEREAS, Community Board 8, Manhattan, recommends approval of this application; and

WHEREAS, the building and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on a through block bounded by East 77<sup>th</sup> Street to the north and East 76<sup>th</sup> Street to the south, between First Avenue and York Avenue, within an R8B zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 7, 1921 when, under BSA Cal. No. 396-21-BZ, the Board permitted the conversion of the subject building from a horse stable to a public parking garage; and

WHEREAS, on November 14, 1922, under BSA Cal. No. 1061-22-BZ, the Board permitted an enclosed third-story enlargement of the subject building, which was not built; and

WHEREAS, on March 23, 1999, under the subject calendar number, the Board permitted the enlargement of the existing building pursuant to ZR § 11-412 for a term of ten years, which expired on March 23, 2009; at that time, the Board also granted an appeal, under BSA Cal. No. 17-95-A, regarding required egress and fire ratings; and

# MINUTES

WHEREAS, subsequently, the grant has been amended at various times; and

WHEREAS, most recently, on January 9, 2007, the Board granted an extension of time to complete construction and permitted modifications to the BSA-approved plans; and

WHEREAS, the applicant now requests an additional ten-year term; and

WHEREAS, at hearing, the Board questioned whether the existing illuminated sign at the site's East 77<sup>th</sup> Street frontage complies with C1 zoning district regulations; and

WHEREAS, in response, the applicant states that the sign projects more than 18 inches beyond the street line, and therefore does not satisfy ZR § 32-622; and

WHEREAS, the applicant further states that the owner has agreed to modify the subject sign so that it does not project more than 18 inches beyond the street line; and

WHEREAS, the applicant submitted a revised sign plan which reflects a sign that complies with C1 sign regulations; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term appropriate with certain conditions as set forth below.

*Therefore it is Resolved* that the Board of Standards and Appeals *waives* the Rules of Practice and Procedure, *reopens*, and *amends* the resolution, as adopted on March 23, 1999, and as subsequently extended and amended, so that as amended this portion of the resolution shall read: "to extend the term for ten years from March 23, 2009, to expire on March 23, 2019, *on condition* that the use and operation shall substantially conform to the previously approved drawings and to the drawings filed with this application marked "Received November 4, 2009"-(1) sheet; and *on further condition*:

THAT the term of this grant shall expire on March 23, 2019;

THAT signage shall comply with C1 zoning district regulations;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by May 17, 2010;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (N.B. 100664372)

Adopted by the Board of Standards and Appeals, November 17, 2009.

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## 172-96-BZ

APPLICANT – Law Office of Mitchell Ross, Esquire, for Don Mitchell owner.

SUBJECT – Application April 17, 2009 – Extension of Term for a variance (§72-21) which expired on May 11, 2009 allowing the operation of a welding shop (UG 16A) contrary to §32-00; Waiver of the Rules. C6-6 zoning district.

PREMISES AFFECTED – 597/99 Marcy Avenue, Southeast corner of Marcy and Vernon Avenues., Block 1759, Lot 7, Borough of Brooklyn.

## COMMUNITY BOARD #3BK

APPEARANCES –

For Applicant: Mitchell Ross.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reopening, and an extension of term for a previously granted variance for a welding shop (Use Group 16A), which expired on May 11, 2009; and

WHEREAS, a public hearing was held on this application on October 6, 2009, after due notice by publication in *The City Record*, with a continued hearing on October 27, 2009, and then to decision on November 17, 2009; and

WHEREAS, the building and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, Commissioner Hinkson, Commissioner Montanez, and Commissioner Ottley-Brown; and

WHEREAS, the subject site is located on the southeast corner of the intersection of Marcy Avenue and Vernon Avenue, within a C1-3 (R6) zoning district; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 11, 1999 when, under the subject calendar number, the Board permitted the legalization of the rear portion of the site for use as a welding shop for the fabrication and assembly of decorative window and door gates, including drilling, bolting, cutting, bending, and spot welding of iron bars and plates, to expire on May 11, 2009; and

WHEREAS, the applicant now requests an additional ten-year term; and

WHEREAS, at hearing, the Board requested that the applicant: (1) clarify whether the mezzanine space within the subject building is affiliated with the welding shop use; (2) remove the graffiti on the site; and (3) limit the hours of operation for the welding shop; and

WHEREAS, in response, the applicant submitted an affidavit from the owner, stating that the mezzanine space is operated as accessory office space to the welding shop, all graffiti will be removed from the site in the spring of 2010 pursuant to a city-sponsored graffiti abatement program, and the hours of operation for the welding shop are Monday through Saturday, from 7:00 a.m. to 6:00 p.m., and Sunday,

# MINUTES

from 9:00 a.m. to 4:00 p.m.; and

WHEREAS, based upon its review of the record, the Board finds that the requested extension of term is appropriate with certain conditions as set forth below.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, reopens, and amends the resolution, as adopted on May 11, 1999, so that as amended this portion of the resolution shall read: "to extend the term for ten years from May 11, 2009, to expire on May 11, 2019, on condition that all use and operations shall substantially conform drawings filed with this application marked "Received July 17, 2009"-(7) sheets and "October 20, 2009"-(1) sheet; and on further condition:

THAT the term of this grant shall expire on May 11, 2019;

THAT the hours of operation shall be limited to Monday through Saturday, from 7:00 a.m. to 6:00 p.m., and Sunday, from 9:00 a.m. to 4:00 p.m.;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT a new certificate of occupancy shall be obtained by May 17, 2010;

THAT all conditions from prior resolutions not specifically waived by the Board remain in effect;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted." (N.B. 100664372)

Adopted by the Board of Standards and Appeals, November 17, 2009.

## 115-53-BZ

APPLICANT – Eric Palatnik, P.C., for Theodoras Zorbas, owner.

SUBJECT – Application July 8, 2009 – Extension of Term and Waiver of the Rules for the continued use of a Gasoline Service Station (*Mobil*) which expired on July 11, 2008. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 252-02 Union Turnpike, southwest corner of Little Neck Parkway, Block 8565, Lot 1, Borough of Queens.

### COMMUNITY BOARD #13Q

APPEARANCES –

For Applicant: Adam Rothkrug.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 8, 2009, at 10 A.M., for decision, hearing closed.

## 240-55-BZ

APPLICANT – Joseph P. Morsellino, Esq., for DLC Properties LLC, owner; Helms Brother's, lessee.

SUBJECT – Application March 11, 2009 – Extension of Term (§11-411) for the continued operation of a UG16 auto repair shop with sales, exchange of vehicles and products which expired on November 3, 2008. C2-2(R6B) & R-4 zoning district.

PREMISES AFFECTED – 207-22 Northern Boulevard, Northern Boulevard and 208<sup>th</sup> Street, Block 7305, Lot 19, Borough of Queens.

### COMMUNITY BOARD #11Q

APPEARANCES –

For Applicant: Joseph P. Morsellino.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 8, 2009, at 10 A.M., for decision, hearing closed.

## 1715-61-BZ

APPLICANT – Mitchell S. Ross, for 21st Century Cleaners Corporation, owner.

SUBJECT – Application July 17, 2009 – Extension of Term (§11-411) for a dry cleaning establishment (UG 6A), which expired on June 5, 2007; Extension of Time to obtain a certificate of occupancy, which expired on December 14, 2000; Waiver of the Rules. R3X zoning district.

PREMISES AFFECTED – 129-02 Guy R. Brewer Boulevard, a/k/a 129-02 New York Boulevard, south west corner of 129<sup>th</sup> Avenue and Guy R. Brewer Boulevard, Block 2276, Lot 59, Borough of Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 8, 2009, at 10 A.M., for decision, hearing closed.

## 60-82-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.

SUBJECT – Application September 22, 2009 – Extension of Time to obtain a Certificate of Occupancy for a gasoline service station (*BP North America*) which expired on December 13, 2007; Waiver of the Rules. C2-3/R7X zoning district.

PREMISES AFFECTED – 60-11 Queens Boulevard, between 60<sup>th</sup> Street and 61<sup>st</sup> Street, Block 1338, Lot 1,

# MINUTES

Borough of Queens.

## COMMUNITY BOARD #2Q

APPEARANCES –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to November 24, 2009, at 10 A.M., for deferred decision.

## 1016-86-BZ

APPLICANT – The Law Office of Fredrick A. Becker, for Opera Owner Incorporated, owner; TSI West 76 LLC d/b/a New York Sports Club, lessee.

SUBJECT – Application August 13, 2009 – Extension of Term for a special permit (§73-36) which expired on May 5, 2007 for the operation of a Physical Culture Establishment (*New York Sports Club*); Extension of Time to obtain a Certificate of Occupancy which expired on October 26, 2000; and Waiver of the Rules. C4-6A zoning district.

PREMISES AFFECTED – 2162-2166 Broadway, easterly side of Broadway 26 feet north of West 76<sup>th</sup> Street, Block 1168, Lot 22, Borough of Manhattan.

## COMMUNITY BOARD #7M

APPEARANCES –

For Applicant: Fredrick A. Becker.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 8, 2009, at 10 A.M., for decision, hearing closed.

## 217-96-BZ

APPLICANT – Joseph P. Morsellino, for Silverbell Investments, owner; Enterprise Rent a Car, lessee.

SUBJECT – Application September 15, 2009 – Extension of Term of a previously granted Variance (§72-21) for the continued use of an existing car rental facility (*Enterprise*) with accessory outdoor storage of rental cars (UG 8) which expired on October 7, 2007; Extension of Time to obtain a Certificate of Occupancy which expired on October 7, 1998; and Waiver of the Rules. C1-2/R-2 zoning district.

PREMISES AFFECTED – 165-01 Northern Boulevard, northeast corner 165<sup>th</sup> Street and Northern Boulevard, Block 53340, Lot 8, Borough of Queens.

## COMMUNITY BOARD #7Q

APPEARANCES –

For Applicant: Joseph P. Morsellino.

**ACTION OF THE BOARD** – Laid over to December 8, 2009, at 10 A.M., for continued hearing.

## 195-99-BZ

APPLICANT – Eric Palatnik, P.C., for Theodore Zorbas, owner.

SUBJECT – Application September 18, 2009 – Extension of Term (§11-411) for the continued use of a Gasoline Service

Station (*Shell*) which expires on November 10, 2009. R-6 zoning district.

PREMISES AFFECTED – 112 Atlantic Avenue, south east corner of Atlantic Avenue and Henry Street, Block 285, Lot 6, Borough of Brooklyn.

## COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Laid over to December 15, 2009, at 10 A.M., for continued hearing.

## 311-04-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for Block 2285 Lite Corporation, owner.

SUBJECT – Application July 8, 2009 – Amendment to a previously granted Variance (§72-21) for a proposed one family dwelling which is contrary to lot coverage (§105-33) and maximum height (§23-631) regulations. R1-2(NA-1) zoning district.

PREMISES AFFECTED – 380 Lighthouse Avenue, south side of Lighthouse Avenue, 579' west of Winsor Avenue, Block 2285, Lot 1, Borough of Staten Island.

## COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Adam Rothkrug and John Buday.

**ACTION OF THE BOARD** – Laid over to December 15, 2009, at 10 A.M., for continued hearing.

## APPEALS CALENDAR

### 147-07-BZY

APPLICANT – Cozen O'Connor Attorneys, for Gabriel Realty, LLC, owner.

SUBJECT – Application August 27, 2009 – Extension of time (§11-332) to complete construction of a minor development commenced under the prior R6 (M1-2) district regulations. R6B zoning district.

PREMISES AFFECTED – 144 North 8<sup>th</sup> Street, south side of North 8<sup>th</sup> Street, 100' east of Berry Street, Block 2319, Lot 11, Borough of Brooklyn.

## COMMUNITY BOARD #1BK

APPEARANCES –

For Applicant: Peter Geis.

**ACTION OF THE BOARD** – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown and Commissioner Montanez .4  
Negative:.....0  
Recused: Commissioner Hinkson.....1  
THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-332, to permit an extension of time for the completion of construction and obtainment of a certificate of occupancy for a minor development currently under construction at the subject site; and

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# MINUTES

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WHEREAS, a public hearing was held on this application on October 20, 2009, after due notice by publication in *The City Record*, and then to decision on November 17, 2009; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, and Commissioner Ottley-Brown; and WHEREAS, Community Board 1, Brooklyn, recommends approval of this application; and

WHEREAS, the subject premises is located on the south side of North 8<sup>th</sup> Street, 100 feet east of Berry Street; and

WHEREAS, the applicant proposes to build a mixed-use residential/commercial building; and

WHEREAS, the premises is currently located within an R6B zoning district; and

WHEREAS, the development complies with the prior R6 (M1-2) zoning district regulations; and

WHEREAS, however, on May 11, 2005, the City Council voted to adopt the Greenpoint Williamsburg Rezoning, which rezoned the site to R6B, as noted above; and

WHEREAS, as of that date, the applicant had obtained permits for the development and had completed 100 percent of its foundation, such that the right to continue construction was vested pursuant to ZR § 11-331, which allows the Department of Buildings (DOB) to determine that construction may continue under such circumstances; and

WHEREAS, however, only two years are allowed for completion of construction and to obtain a certificate of occupancy; and

WHEREAS, on December 11, 2007 the Board granted a two-year extension of time to complete construction and obtain a certificate of occupancy for the proposed development, pursuant to ZR § 11-332; and

WHEREAS, accordingly, because the two-year time limit will expire before construction is completed, the applicant seeks relief pursuant to ZR § 11-30 *et seq.*, which sets forth the regulations that apply to a reinstatement of a permit that lapses due to a zoning change; and

WHEREAS, first, the Board notes that ZR § 11-31(c)(1) defines construction such as the proposed development, which involves the construction of a single building which is non-complying under an amendment to the ZR, as a “minor development”; and

WHEREAS, for a “minor development,” an extension of time to complete construction, previously authorized under a grant for an extension made pursuant to ZR § 11-331, may be granted by the Board pursuant to ZR § 11-332; and

WHEREAS, ZR § 11-332 reads, in pertinent part: “In the event that construction permitted in Section 11-331 (Right to construct if foundations completed) has not been completed and a certificate of occupancy including a temporary certificate of occupancy, issued therefore within two years after the effective date of any applicable amendment . . . the building permit shall automatically lapse and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew such building permit for two

terms of not more than two years each for a minor development . . . In granting such an extension, the Board shall find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.”; and

WHEREAS, the applicant noted that ZR § 11-332 requires only that there be substantial completion and substantial expenditures subsequent to the issuance of building permits and that the Board has measured this completion by looking at time spent, complexity of work completed, amount of work completed, and expenditures; and

WHEREAS, as a threshold issue, the Board must determine that proper permits were issued, since ZR § 11-31(a) requires: “For the purposes of Section 11-33, relating to Building Permits Issued Before Effective Date of Amendment to this Resolution, the following terms and general provisions shall apply: (a) A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes “complete plans and specifications” as required in this Section, the Commissioner of Buildings shall determine whether such requirement has been met.”; and

WHEREAS, the applicant represents that all of the relevant DOB permits were lawfully issued to the owner of the subject premises; and

WHEREAS, the record indicates that the following permit for the proposed development was lawfully issued to the owner by DOB, prior to the Enactment Date: Permit No. 301784399-01-NB, (hereinafter, the “New Building Permit”); and

WHEREAS, the Board has reviewed the record and agrees that the New Building Permit was lawfully issued to the owner of the subject premises prior to the Enactment Date and was timely renewed until the expiration of the two-year term for construction; and

WHEREAS, turning to the substantive findings of ZR § 11-332, the Board notes that there is no fixed standard in an application made under this provision as to what constitutes substantial construction or substantial expenditure in the context of new development; and

WHEREAS, the Board also observes that the work to be measured under ZR § 11-332 must be performed after the issuance of the permit; and

WHEREAS, similarly, the expenditures to be assessed under ZR § 11-332 are those incurred after the permit is issued; and

WHEREAS, accordingly, as is reflected below, the Board only considered post-permit work and expenditures, as submitted by the applicant; and

WHEREAS, in written statements and testimony, the applicant represents that, since the issuance of the New Building Permit, substantial construction has been completed and substantial expenditures were incurred; and

WHEREAS, the applicant states that work on the

# MINUTES

proposed development subsequent to the issuance of the permit includes installation of structural steel and floor slabs, and partial installation of exterior walls, internal partitions and electrical infrastructure; and

WHEREAS, in support of this statement, the applicant has submitted the following: financial records; invoices; and photographs of the site showing the completed building form for the lower ten stories with partially completed façade work, building infrastructure, floors, ceilings, and partial interior wall construction; and

WHEREAS, the Board has reviewed all documentation and agrees that it establishes that the aforementioned work was completed subsequent to the issuance of the valid permits; and

WHEREAS, as to costs, the Board notes that on December 11, 2007, when it granted the first extension of time to complete construction pursuant to ZR § 11-332, the applicant had established that the total expenditure paid for the development was \$12,986,900, or 60 percent of the \$21,805,747 cost to complete; and

WHEREAS, the applicant represents that it has spent an additional \$2,248,069 since December 11, 2007, and that due to construction delays and the need to repair or replace some of the construction that had previously been performed, the cost to complete the project has risen to \$24,700,000; and

WHEREAS, thus, the applicant represents that the total expenditure paid for the development is now \$15,234,969, or 62 percent of the \$24,700,000 cost to complete; and

WHEREAS, as noted, the applicant has submitted financial records and invoices; and

WHEREAS, the applicant contends that this percentage constitutes a substantial expenditure sufficient to satisfy the finding in ZR § 11-332; and

WHEREAS, based upon its review of all the submitted evidence, the Board finds that substantial construction was completed and that substantial expenditures were made since the issuance of the permits; and

WHEREAS, therefore, the Board finds that the applicant has adequately satisfied all the requirements of ZR § 11-332, and that the owner is entitled to the requested reinstatement of the permits, and all other permits necessary to complete the proposed development; and

WHEREAS, accordingly, the Board, through this resolution, grants the owner of the site a two-year extension of time to complete construction, pursuant to ZR § 11-332.

*Therefore it is Resolved* that this application made pursuant to ZR § 11-332 to renew Permit No. 301784399-01-NB, as well as all related permits for various work types either already issued or necessary to complete construction, is granted, and the Board hereby extends the time to complete the proposed development and obtain a certificate of occupancy for one term of two years from the date of this resolution, to expire on November 17, 2011.

Adopted by the Board of Standards and Appeals, November 17, 2009.

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## 159-09-A

APPLICANT – Rothkrug Rothkrug & Spector, LLC, for 2<sup>nd</sup> Street Development Corp., owner.

SUBJECT – Application April 16, 2009 – Proposed construction of a single family home located within the bed of a mapped street (Doane Avenue), contrary to General City Law §35. R2 zoning district.

PREMISES AFFECTED – 85 Woodland Avenue, 175’ east of the intersection of Colon Avenue and Woodland Avenue, Block 5442, Lot 44, Borough of Staten Island.

### COMMUNITY BOARD #3SI

APPEARANCES –

For Applicant: Adam Rothkrug.

**ACTION OF THE BOARD** – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated March 18, 2009, acting on Department of Buildings Application No. 510068150, reads in pertinent part:

“The application for proposed construction in a bed of a mapped street is contrary to GCL 35, and therefore is referred to the Board of Standards and Appeals;” and

WHEREAS, this is an application to permit the proposed construction of a single-family home located within the bed of a mapped street, Doane Avenue, contrary to Section 35 of the General City Law; and

WHEREAS, a public hearing was held on this application on August 25, 2009, after due notice by publication in the *City Record*, with continued hearings on September 22, 2009, October 27, 2009 and November 10, 2009, and then to decision on November 17, 2009; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, Community Board 3, Staten Island, recommends disapproval of this application; and

WHEREAS, by letter dated November 12, 2009, the Fire Department states that it has reviewed the subject proposal, which provides sprinklers, and has no objections; and

WHEREAS, by letter dated June 22, 2009, the Department of Environmental Protection (“DEP”) states that there is an existing eight-inch diameter sanitary sewer and an eight-inch diameter water main in Woodland Avenue between Doane Avenue and Colon Avenue, and there is an existing ten-inch diameter sanitary sewer and eight-inch diameter water main in Doane Avenue between Woodland Avenue and Leverett Avenue; and

WHEREAS, DEP further states that as per Drainage Plan #D-2-5, sheet 5 of 8, dated December 21, 1962, there is a future 12-inch diameter storm sewer and eight-inch diameter sanitary sewer in Woodland Avenue between Doane Avenue and Colon Avenue, and there is a future 15-inch/24-inch

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# MINUTES

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diameter storm sewer and a ten-inch diameter sanitary sewer in Doane Avenue between Woodland Avenue and Leverett Avenue; and

WHEREAS, DEP further states that it requires the applicant to submit a revised survey/plan showing the following: (i) the width of the mapped street in Woodland Avenue between Doane Avenue and Colon Avenue; and (ii) the distance from the existing water mains and sewers to the Lot lines in Woodland Avenue between Doane Avenue and Colon Avenue, and the distance from the existing eight-inch water main water cap and the existing manhole on the eight-inch diameter sanitary sewer to the north side property line in Doane Avenue between Woodland and Leverett Avenue; and

WHEREAS, in addition, DEP requires the applicant to provide the 30'-0" sewer corridor for the future 15-inch diameter storm sewer in Doane Avenue between Woodland Avenue and Leverett Avenue or amend the drainage plan; and

WHEREAS, in response, the applicant submitted a revised site plan reflecting a 70'-0" total width of Woodland Avenue with access still available for the remaining 50'-0" of Woodland Avenue between Doane Avenue and Colon Avenue for the installation, maintenance and/or reconstruction of the future 12-inch diameter storm sewer, an eight-inch diameter existing sanitary sewer and an eight-inch water main, and reflecting that the existing ten-inch diameter sanitary sewer terminates approximately 96'-0" to the north of the north lot line of Lot 44 and the eight-inch city water main terminates approximately 9'-6" to the north of the north lot line of Lot 44; and

WHEREAS, the applicant also provided DEP an escrow payment of \$5,000 and an affidavit from the owner of the subject property guaranteeing that the City's drainage plan will be amended; and

WHEREAS, by letter dated October 23, 2009, DEP states that it has reviewed the revised site plan and has no further objections; and

WHEREAS, by letter dated August 14, 2009, the Department of Transportation ("DOT") states that Doane Avenue between Woodland Avenue and Leverett Avenue is generally mapped to a width of 60'-0", but at the proposed site Doane Avenue is narrowed to a width of 15'-0", which the City does not have jurisdiction over, and the easterly 45 feet of this portion of Doane Avenue was voided by order of Judge William E. Mastro on May 30, 2002 (Fraser v. City of New York, NY Sup. Ct., Index. No 11622/98); and

WHEREAS, DOT further states that it requires that a cul-de-sac be constructed per American Association of State Highway and Transportation Officials standards for dead-end streets; and

WHEREAS, the applicant states that constructing a cul-de-sac at this location is not feasible, as it would prohibit the construction of the proposed home; and

WHEREAS, the applicant further states that the majority of the bed of Doane Avenue is already developed with an existing two-story home constructed pursuant to the above-mentioned court order that voided the street mapping, and constructing a cul-de-sac would require the condemnation of the adjacent home; and

WHEREAS, the applicant further states that there is currently an existing garage and home at the subject site, located in the bed of Doane Avenue, and the proposed development merely seeks to replace the existing home with the proposed home; and

WHEREAS, the Board agrees with the applicant that, given the noted conditions, constructing a cul-de-sac at the subject site is not feasible; and

WHEREAS, at hearing, the Board observed that the tax map submitted by the applicant shows a dotted line indicating an easement over the subject property, and requested that the applicant clarify whether such an easement exists; and

WHEREAS, in response, the applicant submitted the title report, survey, plans and prior tax map for the subject property, none of which indicate that there is an easement over the subject site; and

WHEREAS, the applicant also submitted a correspondence from the Department of Finance stating that the dotted line within Lot 44 represents the street widening line, and that its records do not show an easement on the property; and

WHEREAS, at hearing, the Board directed the applicant to explain the relationship between 87 Woodland Avenue, the address noted on the title report, and 85 Woodland Avenue, the address of the subject home; and

WHEREAS, in response, the applicant states that as part of the proposed development, existing Lot 44 will be apportioned into two new tax lots; the westerly lot (Lot 46) will be known as 87 Woodland Avenue (the historic address associated with the lot), and the easterly lot (Lot 44) will be known as 85 Woodland Avenue; and

WHEREAS, the applicant further states that only the easterly lot is within the bed of Doane Avenue and subject to this application; thus, although the subject site will be known as 85 Woodland Avenue (tentative Lot 44), certain submitted materials reference 87 Woodland Avenue (existing Lot 44) because it pertains to the entire property consisting of both tentative lots; and

WHEREAS, accordingly, the Board has determined that the applicant has submitted adequate evidence to warrant this approval under certain conditions.

*Therefore it is Resolved* that the decision of the Staten Island Borough Commissioner, dated March 18, 2009, acting on Department of Buildings Application No. 510068150, is modified by the power vested in the Board by Section 35 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received November 10, 2009"– (1) sheet; that the proposal shall comply with all applicable zoning district requirements; and that all other applicable laws, rules, and regulations shall be complied with; and *on further condition*:

THAT DOB shall not issue a building permit prior to DEP's approval of an amended drainage plan;

THAT DOB shall review the proposed lot subdivision prior to the issuance of any permit;

THAT the home shall be sprinklered in accordance with the BSA-approved plans;

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# MINUTES

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THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT DOB shall review the proposed plans to ensure compliance with all relevant provisions of the Zoning Resolution;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 17, 2009.

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## 217-09-A

APPLICANT – Marvin B. Mitzner, Esq., for 514-516 East 6<sup>th</sup> Street, owner.

SUBJECT – Application July 7, 2009 – An appeal seeking to vary the applicable provisions under the Multiple Dwelling Law as it applies to the enlargement of non-fireproof tenement buildings. R7-2 zoning district.

PREMISES AFFECTED – 514-516 East 6<sup>th</sup> Street, south side of East 6<sup>th</sup> Street, between Avenue A and B, Block 401, Lots 17 and 18, Borough of Manhattan.

### COMMUNITY BOARD #3M

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to December 15, 2009, at 10 A.M., for continued hearing.

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## 315-08-A

APPLICANT – Stuart A. Klein, Esq., for Bayrock/Sapir Organization, LLC., owner.

SUBJECT – Application December 23, 2008 – An appeal seeking the revocation of permits for a condominium hotel on the basis that the approved plans allow for exceedance of maximum permitted floor area. M1-6 zoning.

PREMISES AFFECTED – 246 Spring Street, between Varick Street and Hudson Street, block 491, Lot 36, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to November 24, 2009, at 10 A.M., for postponed hearing.

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## 243-09-BZY

APPLICANT – Gouranga C. Kundu, for Azharul Islam, owner.

SUBJECT – Application August 19, 2009 – Application to complete construction of a minor development (§11-332) commenced under the prior R6 zoning district. R4-1 zoning district.

PREMISES AFFECTED – 87-12 175<sup>th</sup> Street, corner of 175<sup>th</sup> Street and Warwick, Block 9830, Lot 32, Borough of

Queens.

### COMMUNITY BOARD #12Q

APPEARANCES –

For Applicant: Gouranga C. Kundu.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 8, 2009, at 10 A.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*

# MINUTES

**REGULAR MEETING  
TUESDAY AFTERNOON, NOVEMBER 17, 2009  
1:30 P.M.**

Present: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.

**ZONING CALENDAR**

**54-09-BZ**

**CEQR #09-BSA-104M**

APPLICANT – Juan D. Reyes, III/Riker Danzig et al, for Lord Shivas Properties, LLC, owner; Gab & Aud, Inc., lessee.

SUBJECT – Application April 8, 2009 – Special Permit (§73-36) to allow a physical culture establishment (*Haven Day Spa*) on the cellar level of a four-story mixed-use building, M1-5B district.

PREMISES AFFECTED – 150 Mercer Street (a/k/a 579 Broadway) Mercer Street between Prince and Houston in SoHo, block 512, Lot 20, Borough of Manhattan.

**COMMUNITY BOARD #2M**

APPEARANCES –

For Applicant: Juan Reyes.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Manhattan Borough Superintendent, dated August 10, 2009, acting on Department of Buildings Application No. 100355376, reads in pertinent part:

“42-14D. The proposed physical culture establishment use is not permitted as-of-right in the M1-5B district and is contrary to the ZR;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-5B zoning district within the SoHo Cast Iron Historic District, the legalization of a physical culture establishment (PCE) in the cellar of a four-story mixed-use commercial/residential building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on August 25, 2009, after due notice by publication in the *City Record*, with a continued hearing on September 22, 2009, and then to decision on November 17, 2009; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan, Vice-Chair Collins, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 2, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on a through

block, with frontage on the east side of Mercer Street and the west side of Broadway, between Prince Street and West Houston Street, in an M1-5B zoning district within the SoHo Cast Iron Historic District; and

WHEREAS, the site is occupied by a four-story mixed-use commercial/residential building; and

WHEREAS, the PCE occupies approximately 3,041 sq. ft. of space in the cellar; and

WHEREAS, the PCE is operated as Haven Day Spa; and

WHEREAS, the proposed hours of operation are: Monday through Friday, from 11:00 a.m. to 7:00 p.m.; and Saturday and Sunday, from 10:00 a.m. to 6:00 p.m. and

WHEREAS, the applicant represents that the services at the PCE include facilities for the practice of massage by New York State licensed masseurs or masseuses; and

WHEREAS, the applicant represents that the proposal will not affect the historical integrity of the property; and

WHEREAS, the applicant submitted a Certificate of No Effect from the Landmarks Preservation Commission approving alterations to the subject building, which expired on August 3, 1997; and

WHEREAS, the applicant notes that there have been no changes to the exterior of the subject building since the issuance of the Certificate of No Effect; and

WHEREAS, by letter dated November 13, 2009, the Landmarks Preservation Commission states that interior layout modifications can be addressed by staff level review and approval; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the Board notes that the PCE has been in operation since March 1, 2006, without a special permit; and

WHEREAS, accordingly, the Board has determined that the term of the grant shall be reduced for the period of time between March 1, 2006 and the date of this grant; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 09BSQA104M, dated

# MINUTES

August 4, 2009; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site in an M1-5B zoning district within the SoHo Cast Iron Historic District, the legalization of a physical culture establishment in the cellar of an existing four-story mixed-use commercial/residential building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 23, 2009" - Nine (9) sheets and *on further condition*:

THAT the term of this grant shall expire on March 1, 2016;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; THAT all massages shall be performed by New York State licensed massage therapists; THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT the applicant obtain any additional Landmarks Preservation Commission approvals, if required;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 17, 2009.

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## **56-09-BZ CEQR #09-BSA-105R**

APPLICANT – Omnipoint Communications, Inc., for The South Shore Swimming Club, Inc., owner.

SUBJECT – Application April 15, 2009 – Special Permit (§73-30) to allow a proposed non-accessory radio tower and related equipment. R3X zoning district.

PREMISES AFFECTED – 6736 Hylan Boulevard, south side of Hylan Boulevard between Culotta Lane and Page Avenue, Block 7734, Lot 50, Borough of Staten Island.

### **COMMUNITY BOARD #3SI**

APPEARANCES –

For Applicant: Robert Gaudioso.

**ACTION OF THE BOARD** – Application granted on condition.

**THE VOTE TO GRANT** –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

**THE RESOLUTION** –

WHEREAS, the decision of the Staten Island Borough Commissioner, dated April 13, 2009, acting on Department of Buildings Application No. 510025599, reads in pertinent part:

“Proposed 80 foot monopole (Use Group 6) with telecommunication cabinets located in the Residential district. Refer to the Board of Standards and Appeals for review pursuant to Section 73-30 of NYC Zoning Resolution;” and

WHEREAS, this is an application under ZR §§ 73-30 and 73-03, to permit, in an R3X zoning district within the Special South Richmond Development District, the proposed construction of a non-accessory radio tower for public utility wireless communications, which is contrary to ZR § 22-00; and

WHEREAS a public hearing was held on this application on July 14, 2009 after due notice by publication in *The City Record*, with continued hearings on September 22, 2009, and October 20, 2009, and then to decision on November 17, 2009; and

WHEREAS, Community Board 3, Staten Island, recommends disapproval of this application; and

WHEREAS, the premises and surrounding area had a site and neighborhood examination by Commissioner Montanez; and

WHEREAS, certain members of the community provided written and oral testimony in opposition to the proposed installation (the “Opposition”), raising concerns about the safety and location of the telecommunications pole, including: (1) potential health risks associated with radio frequency emissions from the facility; (2) the proximity of the facility to wetlands and the potential adverse impacts on wildlife; (3) the proximity of the facility to school buildings;

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# MINUTES

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and (4) that alternate sites had not been considered; and

WHEREAS, the proposed telecommunications pole will be located on a portion of a site that is also occupied by the South Shore Swim Club, which consists of two one-story buildings and a swimming pool; and

WHEREAS, the applicant states that the proposed telecommunications facility will consist of a monopole with a height of 82 feet, as well as three small equipment cabinets located at grade near the pole; the equipment cabinets will be surrounded by a fence with a height of eight feet; and

WHEREAS, the proposed monopole has been designed to resemble a flagpole, with six small panel antennas located inside and completely hidden from view; and

WHEREAS, the stealth design includes an American flag and a decorative gold ball with a maximum height of 82 feet; and

WHEREAS, the applicant represents that the telecommunications facility is necessary to remedy a significant gap in reliable service in the vicinity of the site caused by a lack of coverage and capacity; and

WHEREAS, a special permit is required from the City Planning Commission pursuant to ZR § 107-43, since the facility exceeds the 50-ft. height limitation of the Special South Richmond Development District; and

WHEREAS, pursuant to ZR § 73-30, the Board may grant a special permit for a non-accessory radio tower such as the cellular pole proposed, provided it finds “that the proposed location, design, and method of operation of such tower will not have a detrimental effect on the privacy, quiet, light and air of the neighborhood;” and

WHEREAS, the applicant represents that the pole has been designed and sited to minimize adverse visual effects on the environment and adjacent residents; that the construction and operation of the pole will comply with all applicable laws; that no noise or smoke, odor or dust will be emitted; and that no adverse traffic impacts are anticipated; and

WHEREAS, the applicant also states that related equipment cabinets will be installed within an eight-foot high fence enclosure, as noted above; and

WHEREAS, the applicant further represents that the height of the pole is the minimum necessary to provide the required wireless coverage, and that the pole will not interfere with radio, television, telephone or other uses; and

WHEREAS, as to the safety and health concerns raised by the Opposition, the Board appreciates the concerns expressed by these neighbors, but notes that it may not consider arguments about health risks related to such installations, as such consideration is pre-empted by federal law, pursuant to Section 332(c) of the Federal Telecommunications Act of 1996; and

WHEREAS, however, the applicant states that the transmissions from the facility are well below the limits set by the Federal Communications Commission, in accordance with federal law; and

WHEREAS, as to the proximity of the facility to wetlands, the applicant states that it will comply with all Department of Environmental Conservation (“DEC”) requirements; and

requirements; and

WHEREAS, as to the facility’s impacts on wildlife, the applicant submitted a letter from a Certified United States Fish and Wildlife Service Procedure Practitioner, stating that there will be no adverse impacts on wildlife from the facility; and

WHEREAS, as to the proximity of the facility to school buildings, the applicant notes that there is no setback requirement for wireless facilities from schools in New York City, and that the pole will be located at least 700 feet from the nearest school building; and

WHEREAS, as to the Opposition’s assertion that the applicant must identify alternate locations, the Board notes that there is no such requirement for this special permit; and

WHEREAS, based upon its review of evidence in the record, the Board finds that the proposed pole and related equipment will be located, designed, and operated so that there will be no detrimental effect on the privacy, quiet, light, and air of the neighborhood; and

WHEREAS, therefore, the Board finds that the subject application meets the findings set forth at ZR § 73-30; and

WHEREAS, the Board further finds that the subject use will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area; and

WHEREAS, the proposed project will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board finds that the application meets the general findings required for special permits set forth at ZR § 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4; and

WHEREAS, the Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement (EAS) CEQR No. 09-BSA-105R, dated March 25, 2009; and

WHEREAS, the EAS documents show that the project as proposed would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Waterfront Revitalization Program; Infrastructure; Hazardous Materials; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Type I Negative Declaration prepared in accordance with Article 8 of the New York State

# MINUTES

Environmental Conservation Law and 6 NYCRR Part 617, the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes the required findings and *grants* a special permit under ZR §§ 73-03 and 73-30 to allow, in an R3X zoning district within the Special South Richmond Development District, the proposed construction of a non-accessory radio tower for public utility wireless communications, which is contrary to ZR § 22-00, *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application marked “Received April 15, 2009”-(4) sheets; and *on further condition*;

THAT any fencing shall be maintained in accordance with BSA-approved plans;

THAT a special permit shall be obtained from the City Planning Commission pursuant to ZR § 107-43 to address the proposed height prior to DOB’s issuance of any permits;

THAT any permits required by DEC shall be obtained prior to DOB’s issuance of any permits;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 17, 2009.

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## 198-09-BZ

### CEQR #09-BSA-121M

APPLICANT – Eric Palatnik, P.C., for Chelsea Lofts Corp., owner; Personal Training Institute, lessee.

SUBJECT – Application June 29, 2009 – Special Permit (§73-36) to allow the operation of the proposed physical culture establishment (*Personal Training Institute*) on the first floor of an eight-story building. C6-3A zoning district.

PREMISES AFFECTED – 143 West 19<sup>th</sup> Street, between Sixth and Seventh Avenues, Block 795, Lot 14, Borough of Manhattan.

### COMMUNITY BOARD #4M

#### APPEARANCES –

For Applicant: Eric Palatnik.

**ACTION OF THE BOARD** – Application granted on condition.

#### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5

Negative:.....0

#### THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated September 4, 2009, acting on Department of Buildings Application No. 120018140, reads

in pertinent part:

“A physical culture establishment is not a permitted ‘as-of-right’ use in a C6-3A zoning district;” and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-3A zoning district, a physical culture establishment (PCE) on the first floor of an eight-story mixed-use commercial/residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on September 15, 2009, after due notice by publication in the *City Record*, with a continued hearing on October 20, 2009, and then to decision on November 17, 2009; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Vice-Chair Collins, Commissioner Hinkson, and Commissioner Ottley-Brown; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of West 19<sup>th</sup> Street, between Sixth Avenue and Seventh Avenue, in a C6-3A zoning district; and

WHEREAS, the site is occupied by an eight-story mixed-use commercial/residential building; and

WHEREAS, the PCE has a total floor area of approximately 9,600 sq. ft. on the first floor; and

WHEREAS, the PCE is operated as Personal Training Institute; and

WHEREAS, the proposed hours of operation are: Monday through Thursday, from 6:00 a.m. to 9:30 p.m.; Friday, from 6:00 a.m. to 8:00 p.m.; Saturday, from 7:00 a.m. to 2:00 p.m.; and Sunday, from 7:00 a.m. to 12:00 p.m.; and

WHEREAS, the applicant represents that the services at the PCE include facilities for instruction and programs for physical improvement; and

WHEREAS, the Board finds that this action will neither 1) alter the essential character of the surrounding neighborhood; 2) impair the use or development of adjacent properties; nor 3) be detrimental to the public welfare; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and issued a report which the Board has determined to be satisfactory; and

WHEREAS, the PCE will not interfere with any pending public improvement project; and

WHEREAS, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed special permit use is outweighed by the advantages to be derived by the community; and

WHEREAS, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-36 and 73-03; and

WHEREAS, the project is classified as an Unlisted action pursuant to 6 NYCRR Part 617.2; and

WHEREAS, the Board has conducted an environmental

# MINUTES

review of the proposed action and has documented relevant information about the project in the Final Environmental Assessment Statement, CEQR No. 09BSA121M, dated September 11, 2009; and

WHEREAS, the EAS documents that the operation of the PCE would not have significant adverse impacts on Land Use, Zoning, and Public Policy; Socioeconomic Conditions; Community Facilities and Services; Open Space; Shadows; Historic Resources; Urban Design and Visual Resources; Neighborhood Character; Natural Resources; Hazardous Materials; Waterfront Revitalization Program; Infrastructure; Solid Waste and Sanitation Services; Energy; Traffic and Parking; Transit and Pedestrians; Air Quality; Noise; Construction Impacts; and Public Health; and

WHEREAS, no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable; and

WHEREAS, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

*Therefore it is Resolved* that the Board of Standards and Appeals issues a Negative Declaration prepared in accordance with Article 8 of the New York State Environmental Conservation Law and 6 NYCRR Part 617 and § 6-07(b) of the Rules of Procedure for City Environmental Quality Review and Executive Order No. 91 of 1977, as amended, and makes each and every one of the required findings under ZR §§ 73-36 and 73-03, to permit, on a site within a C6-3A zoning district, the establishment of a PCE on the first floor of an existing eight-story mixed-use commercial/residential building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 6, 2009"- One (1) sheet and "Received October 29, 2009"- One (1) sheet and *on further condition*:

THAT the term of this grant shall expire on November 17, 2019;

THAT there shall be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board;

THAT all massages shall be performed by New York State licensed massage therapists;

THAT sound attenuation measures shall be installed in accordance with the BSA-approved plans;

THAT the above conditions shall appear on the Certificate of Occupancy;

THAT Local Law 58/87 compliance shall be as reviewed and approved by DOB;

THAT fire safety measures shall be installed and/or maintained as shown on the Board-approved plans;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s);

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all of the applicable provisions of the

Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 17, 2009.

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## 215-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 92-16 95<sup>th</sup> Avenue Realty Corporation By: Alfred Smith, owner.  
SUBJECT – Application July 6, 2009 – Special Permit (§11-411 & §11-413) for reinstatement and change of use from a wholesale (UG7) to retail (UG6) on the ground floor of a three story building, which expired on March, 2002; Extension of Time to obtain a certificate of occupancy, which expired March 1993; and Waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 92-16 95<sup>th</sup> Avenue Southwest corner of 93<sup>rd</sup> Street and 95<sup>th</sup> Avenue, Block 9032, Lot 8, Borough of Queens.

## COMMUNITY BOARD #9Q

### APPEARANCES –

For Applicant: Lyra J. Altman.

**ACTION OF THE BOARD** – Application granted on condition.

### THE VOTE TO GRANT –

Affirmative: Chair Srinivasan, Vice Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez .....5  
Negative:.....0

### THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Superintendent, dated June 8, 2009, acting on Department of Buildings Application No. 420013103 reads, in pertinent part:

"Proposed extension of time to...obtain a Certificate of Occupancy, extension of term, amendment to the plans and modification of use are contrary to prior BSA approval under calendar number 440-59-BZ;" and

WHEREAS, this is an application for a waiver of the Rules of Practice and Procedure, a reinstatement of a prior Board approval, an extension of term, and an extension of time to obtain a certificate of occupancy pursuant to ZR § 11-411, minor modifications to the previously-approved plans pursuant to ZR § 11-412, and a change in use from wholesale sales of imported food products (Use Group 7) to a Use Group 6 retail use on the first floor of a three-story building, pursuant to ZR § 11-413; and

WHEREAS, a public hearing was held on this application on October 27, 2009 after due notice by publication in the *City Record*, and then to decision on November 17, 2009; and

WHEREAS, the premises and surrounding area had site and neighborhood examinations by Chair Srinivasan and Commissioner Ottley-Brown; and

WHEREAS, the premises is located on the southwest corner of 93<sup>rd</sup> Street and 95<sup>th</sup> Avenue, in an R5 zoning district; and

# MINUTES

WHEREAS, the site is currently occupied by a three-story mixed-use commercial/ residential building, with offices, storage, and wholesale sales of imported food products on the first floor and residential uses on the second and third floors; and

WHEREAS, on September 27, 1960, under BSA Cal. No. 440-59-BZ, the Board granted a variance to permit the change in use of the first floor of the existing three-story building, with two one-story additions, from store and storage, to offices, storage and wholesale sales of imported food products for a term of ten years, to expire on September 27, 1970; and

WHEREAS, subsequently, the grant was amended and the term extended by the Board at various times; and

WHEREAS, most recently, on March 3, 1992, the Board granted an extension of term for ten years from the expiration of the previous grant, to expire on December 2, 2000; and

WHEREAS, the applicant now proposes to reinstate and extend the term of the prior grant, to extend the time to obtain a certificate of occupancy, to allow minor modifications to the previously-approved plans, and to allow a change in use on the first floor from a Use Group 7 use to a Use Group 6 use; and

WHEREAS, pursuant to ZR § 11-411, the Board may extend the term of an expired variance; and

WHEREAS, pursuant to ZR § 11-412, the Board may grant a request for modifications to the site; and

WHEREAS, the applicant represents that the minor modifications to the site include the removal of two storage closets; and

WHEREAS, pursuant to ZR § 11-413, the Board may grant a request for a change in use from one non-conforming use to another non-conforming use which would be permitted under one of the provisions applicable to non-conforming uses as set forth in ZR §§ 52-31 to 52-36; and

WHEREAS, the applicant represents that its request for a change in use on the first floor of the subject site from a Use Group 7 use to a Use Group 6 use would be permitted pursuant to ZR § 52-34; and

WHEREAS, the applicant states that the change in use will not alter the essential character of the neighborhood, as a Use Group 7 use has operated at the site for over 45 years, and the surrounding area has a number of ground floor commercial uses; and

WHEREAS, at hearing, the Board questioned whether the signage at the site complied with C1 district signage regulations; and

WHEREAS, in response, the applicant submitted revised plans reflecting signs with a maximum of 75 sq. ft. of surface area on each frontage, in compliance with C1 district regulations; and

WHEREAS, the Board has determined that evidence in the record supports the findings required to be made under ZR §§ 11-411, 11-412, and 11-413.

Therefore it is Resolved that the Board of Standards and Appeals waives the Rules of Practice and Procedure, issues a Type II determination under 6 NYCRR Part 617.5 and 617.3 and §§ 5-02(a), 5-02(b)(2) and 6-15 of the Rules of Procedure for City Environmental Quality Review and

makes each and every one of the required findings under ZR §§ 11-411, 11-412, and 11-413, to permit the reinstatement of a prior Board approval, an extension of term, and an extension of time to obtain a certificate of occupancy, minor modifications to the previously-approved plans, and a change in use from wholesale sales of imported food products (Use Group 7) to a Use Group 6 use on the first floor of a three-story building; on condition that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked "Received October 26, 2009"-(6) sheets and "November 4, 2009"-(2) sheets; and on further condition:

THAT this permit shall be for a term of ten years, to expire on November 17, 2019;

THAT the hours of operation shall be limited to 6:00 a.m. to 10:00 p.m., daily;

THAT the above conditions shall be listed on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained by May 17, 2010;

THAT signage shall be limited to a maximum surface area of 75 sq. ft. on each frontage;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only;

THAT the approved plans shall be considered approved only for the portions related to the specific relief granted; and

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 17, 2009

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## 186-08-BZ

APPLICANT – Petrus Fortune, P.E., for Kevin Mast, Chairman, Followers of Jesus Mennonite Church, owner.

SUBJECT – Application July 10, 2008 – Special Permit (§73-19) to allow the legalization and enlargement of a school (*Followers of Jesus Mennonite Church & School*) in a former manufacturing building, contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 3065 Atlantic Avenue, northwest corner of Atlantic Avenue and Shepherd Avenue, Block 3957, Lot 45, Borough of Brooklyn.

## COMMUNITY BOARD #5BK

APPEARANCES –

For Applicant: James E. Gochnauer.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to January 26, 2009, at 1:30 P.M., for decision, hearing closed.

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# MINUTES

## 28-09-BZ

APPLICANT – Moshe M. Friedman, P.E., for 133 Equity Corp., owner.

SUBJECT – Application February 17, 2009 – Variance (§72-21) to permit a four-story residential building on a vacant lot, contrary to use regulations (§42-10). M1-1 zoning district.

PREMISES AFFECTED – 133 Taaffe Place, east side of Taaffe Place, 142'-2.5" north of intersection of Taaffe Place and Myrtle Avenue, Block 1897, Lot 4, Borough of Brooklyn.

### COMMUNITY BOARD #3BK

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to January 26, 2010, at 1:30 P.M., for adjourned hearing.

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## 29-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Chabad Israeli Center, owner.

SUBJECT – Application February 23, 2009 – Variance (§72-21) to legalize and enlarge a synagogue (*Chabad Israeli Center*), contrary to lot coverage, front yards, side yards, and parking regulations. R3X zoning district.

PREMISES AFFECTED – 44 Brunswick Street, northwest corner of Brunswick Street and Richmond Hill Road, Block 2397, Lot 212, Borough of Staten Island.

### COMMUNITY BOARD #2SI

APPEARANCES –

For Applicant: Lyra Altman.

**ACTION OF THE BOARD** – Laid over to January 12, 2010, at 1:30 P.M., for adjourned hearing.

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## 161-09-BZ

APPLICANT – Rizzo Group, for 25 Garfield Sparta, LLC, owner.

SUBJECT – Application April 23, 2009 – Variance (§72-21) for the development of two residential buildings (20 dwelling units) contrary to rear yard equivalent, floor area, lot coverage, minimum distance between buildings and minimum distance between legally required window regulations (§§23-532, 23-145, 23-711, 23-861). R6B zoning district.

PREMISES AFFECTED – 580 Carroll Street (25 Garfield Place) Carroll Street/Garfield Place, between Fourth and Fifth Avenue, Block 951, Lot 13, Borough of Brooklyn.

### COMMUNITY BOARD #6BK

APPEARANCES –

For Applicant: Ashwin Verma and Saif Sumaida.

For Opposition: Brad Lander, P. Adam Walsh, Johnny Werbe and Abigail Banker.

**ACTION OF THE BOARD** – Laid over to January 12, 2010, at 1:30 P.M., for continued hearing.

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## 187-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Torath Israel Sephardic Congregation, owner.

SUBJECT – Application June 9, 2009 – Variance (§72-21) to permit the construction of a mikvah (ritual bath) in the proposed building (*Torath Israel Sephardic Congregation*), contrary to FAR and lot coverage (§24-11), side yard (§24-35) and rear yard (§24-36). R3-1 zoning district.

PREMISES AFFECTED – 94 Amherst Street, west side of Amherst Street, between Shore Boulevard and Hampton Avenues, Block 8726, Lot 43, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

For Applicant: Lyra Altman.

For Opposition: Hilton Dantas, Harvey Lerner and Francene Olk.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5  
Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 8, 2009, at 1:30 P.M., for decision, hearing closed.

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## 239-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for New York University, owner.

SUBJECT – Application August 5, 2009 – Variance (§72-21) to allow for the development of a six-story community facility building (*NYU Center for Academic and Spiritual Life*), contrary to lot coverage (§24-11) and height and setback regulations (§§24-522, 33-431). R7-2/C1-5 and R7-2 Districts.

PREMISES AFFECTED – 238 Thompson Street, a/k/a 56 Washington Square South, block bounded by Thompson and West 3<sup>rd</sup> Streets, Laguardia Place, Washington Square South Block 538, Lot 27, Borough of Manhattan.

### COMMUNITY BOARD #2M

APPEARANCES – None.

**ACTION OF THE BOARD** – Laid over to December 15, 2009, at 1:30 P.M., for continued hearing.

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## 269-09-BZ

APPLICANT – Dennis D. Dell'angelo, R.A., for Jehoshua Cohen, owner.

SUBJECT – Application September 21, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to lot coverage (§23-141); side yard (§23-461) and less than the required rear yard (§23-47) and the legalization of a prior one story enlargement at the front of the existing home. R-5 zoning district.

PREMISES AFFECTED – 1938 East 12<sup>th</sup> Street, west side of East 12<sup>th</sup> Street, between Avenue S and Avenue T, Block 7290, Lot 21, Borough of Brooklyn.

### COMMUNITY BOARD #15BK

APPEARANCES –

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# MINUTES

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For Applicant: Dennis D. Dell'angelo.

**ACTION OF THE BOARD** – Laid over to December 8, 2009, at 1:30 P.M., for continued hearing.

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**279-09-BZ**

APPLICANT – Lewis E. Garfinkel, R.A., for Rifki Zoneshayn, owner.

SUBJECT – Application October 1, 2009 – Special Permit (§73-622) for the enlargement of an existing single family home, contrary to open space and floor area (§23-141(a)); side yard (§23-461) and less than the required rear yard (§23-47). R-2 zoning district.

PREMISES AFFECTED –2709 Avenue M, between East 27<sup>th</sup> and East 28<sup>th</sup> Street, Block 7645, Lot 7, Borough of Brooklyn.

**COMMUNITY BOARD #14BK**

APPEARANCES –

For Applicant: Lewis E. Garfinkel.

For Opposition: Arthur Bredk.

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Srinivasan, Vice-Chair Collins, Commissioner Ottley-Brown, Commissioner Hinkson and Commissioner Montanez.....5

Negative:.....0

**ACTION OF THE BOARD** – Laid over to December 8, 2009, at 1:30 P.M., for decision, hearing closed.

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*Jeff Mulligan, Executive Director*

*Adjourned: P.M.*